BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268–0001

Complaint on Sunday and Holiday Collections	Docket No. C2001–1

MOTION OF THE UNITED STATES POSTAL SERVICE FOR CERTIFICATION OF APPEAL FROM PRESIDING OFFICER'S RULING NO. C2001-1/10
(August 28, 2001)

The Postal Service hereby requests certification of an appeal from Presiding Officer's Ruling No. C2001-1/10, issued on August 21, 2001. The immediate subject of this dispute is DFC/USPS-19, which is a request for access to an electronic version of the entire Collection Box Management System (CBMS) inventory database, containing location, collection schedules, and similar information for virtually all of the hundreds of thousands of collection boxes across the country. The broader subject of this dispute is the integrity of the service complaint process under section 3662, and the potentially detrimental consequences of Postal Service participation in proceedings in which adequate safeguards to protect both the integrity of that process and the security of the Postal Service's legitimate interests are not maintained.

Rule 32(b)(i-ii)

Rule 32 provides that an appeal shall not be certified unless the ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion, and that an immediate appeal will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy. The Postal Service submits that its request for certification of an appeal from Ruling No. 10

meets these standards.

Narrowly stated, there are two important questions of law and policy involved. Those are: 1) what are the standards by which the scope of permissible discovery on a large database should be evaluated, and 2) what are the conditions under which access to sensitive material should be allowed, in circumstances in which the requesting party's actions and statements suggest that support for the complaint may be at best a secondary purpose for seeking access to an entire database, only a part of which is even arguably relevant or "on point."

More broadly, the important question is how the Postal Service can, in a proceeding brought pursuant to the Commission's limited authority under section 3662, reasonably seek to protect itself from having its scarce institutional resources appropriated by individuals, no matter how well-intentioned, who express a motivation and intent to use those resources to pursue an agenda of their own choosing. As discomforting as it may be even to broach such matters, the Postal Service cannot shirk its obligations to those on whose behalf it operates by pretending as if those possibilities could never occur. Despite the perceived need to underscore the seriousness of its legal and policy concerns in these terms, however, it bears noting at this point that the ultimate resolution of this dispute proposed by the Postal Service in this pleading is not a radical one, and, in primary focus, requires nothing more than taking statements made by the complainant at face value. On the other hand, the current status quo established by Ruling No. 10 is one which the Postal Service believes not only to be legally flawed, but one which the Postal Service at present does not perceive as providing adequate protection to its institutional interests.

With respect to the other prong of Rule 32(b), subsequent review would in this instance be an inadequate remedy. If the Postal Service were to provide all of the information covered by Ruling No. 10 under the terms specified, and subsequent review were to determine that only a portion of that information needed to be provided, or that different terms of access would have been appropriate, the damage would already have been done. Therefore, an immediate appeal is required to resolve these important questions of law and policy.

On a related matter, Ruling No. 10 (at page 8) includes a provision that possible objections to the compromise solution (i.e., provision of a subset of the material without protective conditions) should not delay provision of the entire set of materials under protective conditions. However, since the Postal Service is appealing the scope of materials provided under the protective conditions, as well as what is labeled as the compromise solution, it is not possible to apply that provision. Moreover, even were the Postal Service's appeal limited to the alternative solution, it would be premature to turn over an entire database under protective conditions in the presence of an active proposal to convert a subset of the same database from protected to unprotected status. The Postal Service believes it prudent to achieve more finality as to the intended status of the database in this proceeding, and then carefully evaluate its options. Nevertheless, the Postal Service is taking active steps to extract the material in question from the mainframe, and to get it from San Mateo to headquarters, in order to minimize any logistical delay subsequent to ultimate resolution of the legal and policy issues.

Procedural Background

DFC/USPS-19, filed on May 25, 2001, reads as follows:

> Please provide the following information, in files in Microsoft Excel or similar format, from the Collection Box Management System database for every collection box in the United States that is in the database: location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times.

The Postal Service's objection was filed on June 4, Mr. Carlson's motion to compel was filed on June 26, and the Postal Service's opposition was filed on July 9. On July 23, Presiding Officer's Ruling No. C2001-1/6 granted the motion to compel a response to DFC/USPS-19, subject to standard Commission protective conditions. The Postal Service moved for partial reconsideration of Ruling No. 6, seeking to limit the scope of the CBMS material provided, on July 27. In a pleading filed on August 2, Mr. Carlson opposed that request, and filed a cross-motion for reconsideration, seeking to have the protective conditions removed. The Postal Service responded to that pleading on August 9, and Presiding Officer's Ruling No. C2001-1/10 was issued on August 21, 2001.

Substantive Background

From the very beginning of this proceeding, the Postal Service has had concerns regarding possible motives for its initiation. Starting with the Complaint itself, the relief requested was only that the "Commission should further consider conducting a hearing" on several holiday and holiday eve topics (¶ 39 of the Complaint), rather than embodying a statement of the complaint's view of the appropriate outcome emanating

from that hearing.[1] It is troubling when the moving party appears more interested in the mere prospect of initiation of the hearing process than in what is likely to be produced in terms of more conventional legal notions of "relief." Moreover, the reluctance of the complainant to take a firm position, even when offered the opportunity to amend the complaint, was likewise troubling. While other explanations may be plausible, one reason why the complainant would go no further than a claim that holiday service "may" be inadequate (¶¶ 20, 34, March 29 Amended Complaint) could have been to ensure that the opportunity to use discovery was not foreclosed by an obligation to proceed directly to whatever legal and policy arguments he might believe were supported by his largely uncontested factual allegations.[2]

The submission of DFC/USPS-19 only exacerbated those concerns. Mr. Carlson had previously sought portions of the CBMS inventory database under the FOIA, and had initiated federal court litigation when he failed to achieve his objective from the Postal Service. (That litigation is apparently still pending.) In this proceeding to explore nationwide service issues relating to holidays, Mr. Carlson was suddenly seeking micro-level weekday, Saturday, and holiday collection information on every collection box in the CBMS database. The congruence was striking between this

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[1] Paragraph 38 went further, actually requesting issuance of a public report regarding the alleged failure to conform with the Sunday and holiday provisions of the POM, but the Commission declined to proceed with that portion of the request.

[2] Initiation of a section 3662 complaint proceeding conceivably could be viewed as an ideal instrument to extract otherwise unavailable information from the Postal Service, regardless of any abiding interest in whether the associated hearing leads to any other useful result. Given the substantial drain on its limited resources that pursuit of such a strategy might entail, the Postal Service cannot afford to ignore such a potential abuse of the complaint process.

discovery request and the material long sought by Mr. Carlson through other means. Naturally, therefore, the focus shifted to what justification Mr. Carlson could present to explain why the same information he had sought previously in unrelated contexts was an appropriate target for discovery in a relatively narrow complaint case.

The supposed answer came in Mr. Carlson's June 26 motion to compel. Mr. Carlson explained that the data he sought was needed for calculations to quantify the harm caused to customers by early collections on holiday eves in previous years. Motion to Compel at 4-9. He explicitly stated his intent to perform those calculations for the districts identified by the Postal Service in response to DFC/USPS-14 as having advanced collections on Christmas/New Year's eves in 1998, 1999, or 2000, and the one district identified as having advanced collections on July 3, 2000. Id. at 4-5. Beyond that, while Mr. Carlson discussed at some length (id. at 7-9) the types of inferences that one could draw from various bits of information contained within the CBMS database on each collection box, he never presented any coherent explanation of how any of that additional information could be incorporated into the quantitative analysis which he was broadly claiming as the basis for his request. See Postal Service July 9 Opposition to Motion to Compel at 4, 7-8. Importantly, however, Mr. Carlson clearly rested his relevance arguments on the need to quantify harm to customers caused by reported historical instances of early collections in previous years.[3]

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[3] Mr. Carlson's motion to compel also claimed to need to know the location of the one percent of boxes which the CBMS database indicates post a holiday collection time, in order to be able to evaluate compliance with the instruction to post holiday collection times only on boxes from which the mail will be swept and processed on

It is important to understand the true state of the record with regard to the information available on the historical incidences of early collections on holiday eves. That information is presented in most detail in USPS-LR-4, which shows each district that advanced collections, and the manner in which they were advanced. Essentially, as explained in some detail in the Postal Service's July 27 Motion for Reconsideration, 20 districts advanced collections to a time certain (e.g, 12 noon, 1 p.m, 3 p.m, etc.), while another 7 advanced collections from a weekday schedule to a Saturday schedule. That information is spelled out in full detail in LR-4, and the Postal Service submits that it constitutes an ample "quantitative" basis to assess what Mr. Carlson alleges to be the "harm" caused by the advanced collections.

Consider two districts, one that advanced collections to noon, and the other that advanced collections to 3 p.m. To the extent that one accepts the mechanistic view that later collections cause less harm than earlier ones, comparisons between these two districts are easily made without any CBMS data on individual collection boxes. Rather than accept such a common-sense approach, however, what Mr. Carlson is claiming is the need to separately examine the normal collection time for each box in the district, compute the difference between that time and the advanced time, and proffer that difference as some measure of the alleged "harm" caused by the early advancement with respect to that particular box. Although Mr. Carlson's motion to compel was sketchy beyond that point, apparently he believes he could then sum these

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every holiday. Motion to Compel at 6. In fact, however, no CBMS information about those boxes is necessary for purposes of that evaluation except the processing area in which the box is located.

differences across all the boxes in the district and arrive at a more aggregate quantitative measure of "harm." The approach described by Mr. Carlson, if implemented, might bring more information to bear, but whether the additional fuel would cause the fire to produce more light, rather than more smoke, is highly doubtful. What is not doubtful, however, is that the absence of the CBMS data that Mr. Carlson seeks would in no sense leave the Commission without a substantial basis to evaluate the effects of advanced collections, in those instances wherein collections were advanced. The detailed information in LR-4 fulfills any such need.[4]

An additional troubling feature of the request in DFC/USPS-19 is that it seeks data that could only be applied at a level of analysis -- micro-analysis of hundreds of thousands of individual collection boxes -- that is far removed from the nationwide level at which the ultimate issues in this case must be addressed. If this fact were

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[4] While the situation may be somewhat more complicated for those districts that switched to a Saturday collection schedule, those complications only serve to highlight the reasons why the superficial appeal of Mr. Carlson's approach is illusory. Compared with customers in a district that sets the last pickup at 1 p.m., interested customers in a district that instead switches to a Saturday schedule would likely have the option to try to find a box with a late afternoon pickup, because most areas have at least some boxes with a relatively late pickup on Saturday. The critical assumption, however, is that the customer is aware that the weekday schedule is not in effect. If customers can adjust their deposits to meet the advanced schedule (Saturday or otherwise), it is unclear why they would be perceived to have suffered any harm at all. Mr. Carlson's mechanistic approach would ignore this factor completely. Beyond this, of course, is the additional factor that none of this matters if customers are not depositing mail on the holiday eve, or do not particularly care when that mail is processed, which is likewise ignored by Mr. Carlson's "calculation" approach. Fundamentally, it is fanciful to imagine that the type of quantification that Mr. Carlson contemplates (i.e., that which extends beyond an identification of districts and a description of the schedule adjustments) can materially advance what is much more of a gut-level philosophical question of whether a reasonable person thinks that advanced collections on holiday eves are a matter of concern or not.

considered only in the context of the question of whether or not Mr. Carlson was wasting his time by choosing an inefficient mode of analysis, the Postal Service would be indifferent to this feature of the request. But presented in the context of the question of whether Mr. Carlson's primary motivation in seeking the CBMS nationwide database was for purposes of this proceeding, or for unrelated purposes, this feature takes on great relevance. Mr. Carlson's stated rationale with regard to holiday collection schedules offers a perfect example. If Mr. Carlson truly wished to establish whether the one percent of boxes with posted holiday collections were located in the areas of processing centers that have processed mail on every holiday, he could have simply asked the Postal Service that question directly. Similarly, by directly posing questions focused on the typical effects of previous advanced collections, he could have developed his arguments on the alleged "harm" that those advancements caused, while shifting to the Postal Service the burden of evaluating the range of collection variations. The fact that he instead chose to claim a need for nationwide CBMS collection-box level data to address these types of questions himself, when at the same time constantly emphasizing the limited resources he has available as an individual litigant, suggests that his primary interest in the CBMS database extends well beyond its application for purposes of this proceeding.

The final important background element is the unsuitability of the CBMS database sought in DFC/USPS-19 for public disclosure. It is the view of responsible officials in the Postal Inspection Service that providing an electronic version of the nationwide CBMS database would potentially jeopardize employee safety and mail security. See, July 9 Opposition to Motion to Compel at 9-11, August 9 Response to

the Cross-Motion at 5-6. It would, moreover, conflict with the concerns expressed by the Postal Service during the course of the pending FOIA litigation in federal court. The Postal Service suggested, however, in its July 9 Opposition to the Motion to Compel (at pages 11-13) that its concerns in these regards could be resolved by application of standard Commission protective conditions.

Presiding Officer's Ruling No. C2001-1/6

Ruling No. 6, issued on July 23, granted the motion to compel, but allowed the material to be furnished under standard protective conditions. The Ruling noted that the Postal Service's position on protective conditions "paved the way to narrow the issues considered in this ruling, and to simplify its resolution." Ruling No. 6 at 3. It also stated that "[p]roviding the answer under protective conditions eliminates the question of whether the answer to this interrogatory should be publically disclosed ... [and] also gives deference to the federal courts to resolve the FOIA issue." Id. at 4.

On the issue of relevance, the Ruling (at page 5) stated that the "potential difficulty in digesting this large quantity of material and using it to support argument at a substantially nationwide level is recognized, but that does not make the material any less relevant." With regard to the Postal Service's explanation of why much of the information contained in the requested database would be unnecessary for potential use in the calculations articulated within the motion to compel, the Ruling included the following:

> Another issue related to the quantity of data is the Postal Service's allegation of over-breadth for this interrogatory. While this argument may have merit, there appears to be little difference in effort required by the Postal Service to provide all the information requested, versus sorting through the data to determine what is exactly on point. If it were apparent

> that there would be a substantial difference in burden at this point in time, this issue would have been given more weight.

Ruling No. 6 at 5

Ruling No. 6 prompted responsive pleadings from both the Postal Service and Mr. Carlson. The Postal Service moved for reconsideration of its arguments on over-breadth. Mr. Carlson, supported by Mr. Popkin, moved for removal of the protective conditions. These cross-motions for reconsideration of Ruling No. 6 were addressed in Ruling No. 10, the object of the instant motion.

Presiding Officer's Ruling No. C2001-1/10

Ruling No. 10, issued on August 21, reached three conclusions. First, the ruling denied the Postal Service's motion for reconsideration of the scope of the material to be filed. The Postal Service believes this portion of the ruling to be erroneous, and seeks Commission review. Second, the ruling denied Mr. Carlson's motion seeking removal of the protective conditions. The Postal Service believes this portion of the ruling to be essentially correct, and seeks Commission adherence to the policies and principles stated therein. Lastly, the ruling devises an alternative solution, requested by neither party, which directs production of a nationwide CBMS database, with the box address field removed, to be provided free from any protective conditions. The Postal Service believes this portion of the ruling also to be erroneous, and seeks Commission review.

Overbreadth

The denial in Ruling No. 10 of the Postal Service's motion for partial reconsideration on the issue of overbreadth is predicated on the assertion that Ruling No. 6 determined that all of the requested CBMS information has relevance in this

proceeding, and, consequently, the Postal Service's interpretation of that ruling, as holding that irrelevant data should be provided in the absence of significant burden, was erroneous. Ruling No. 10 at 3. In relation to the portion of page 5 of Ruling No. 6 quoted above, it states:

> The Ruling used the term "over-breadth" to describe the Postal Service's perception of what data Carlson would use in his analysis compared to the quantity of information requested. The potential merit in the over-breadth argument is the acknowledgment that if the interrogatory had been more narrowly drafted, it may have reduced the burden on the Postal Service. Having previously determined that all of the information is relevant, there was no intent to imply that a portion of the data set lacked relevance. The Ruling suggested that over-breadth arguments could have been taken into consideration if the Postal Service had argued that it would be significantly less burdensome to provide a reduced data set, versus the complete data set. The Postal Service is incorrect when it interprets the Ruling as holding that irrelevant data should be provided because there is no significant burden in doing so.

Id.

This portion of Ruling No. 10, however, cannot be reconciled with the above-quoted portion of Ruling No. 6 which, if not explicitly identifying a portion of the data set as irrelevant, certainly acknowledged that a portion of it was not "on point." The most natural interpretation of the term "on point," when used in the context of a response to a pleading establishing that much of the data set would have no applicability in the types of calculations proposed by Mr. Carlson, is that the portion of the data set that is not "on point" would lack probative value. In other words, that portion of the data set is irrelevant. In contrast, the suggestion that Ruling No. 6 only intended to imply that if the request had been more narrowly drafted, it may have reduced the burden on the Postal Service to respond, is too strained to withstand scrutiny. That implication would be little more than a tautology, and would have added nothing to a discussion primarily

intended to address the issue of relevance.

Ruling No. 10 also suggests that to require justification for every element of a data request, where the overall interrogatory sought relevant information, could lead to an inappropriate standard for discovery, because it would require the requestor to know what the response contained before having the chance to examine it. Ruling No. 10 at 4. There are several flaws in this position. First, a request involving discrete "data elements" is severable into those elements for purposes of analysis, and it would be difficult under these circumstances to comprehend a preconception that the "overall interrogatory" seeks relevant information. If a discovery request seeks three relevant data elements and a fourth, irrelevant, data element, it is meaningless to assert that the overall interrogatory seeks relevant information. Each data element should be examined on its own merits.

Second, while at times it may be appropriate to be concerned that a requestor might be unable to anticipate the contents of an unseen response in order to justify its relevance, such a concern is inapposite in this instance. At issue here is not, for example, a broad request for internal memoranda and documents, in which circumstances the requestor may indeed find if difficult to articulate how he or she would intend to apply the information discovered until having access to the documents and the opportunity to know what they actually contain. In this instance, the materials at issue are discrete elements of a database.

In this context, elements of a database could be defined as fields of information, or similar logical groups of data, such as those pertaining to discrete facilities, geographic areas, products, etc. To the extent that Ruling No. 10 suggests that

discovery requests directed at data bases containing discrete multiple elements do not need to explain the relevance of all known data elements requested, the ruling is erroneous, and its application could have harmful consequences if applied in future discovery disputes. By failing to distinguish between the obligations that may reasonably be imposed on discovery requests seeking to obtain known data elements, and those pertaining to discovery requests seeking to obtain truly unknown information, Ruling No. 10, like Ruling No. 6, has applied the wrong legal standard to the Postal Service's attempts to limit the scope of the CBMS material provided. The Postal Service submits that this question presents an important question of policy and law for the Commission's review.

Based on the discussion on pages 7-9 of the June 26 Motion to compel, Mr. Carlson is not only fully familiar with what is intended to be included in those data elements, but he even has opinions on instances in which they do not necessarily reflect accurate information. The "unknowns," so to speak, are limited to geographical information, and hours of the day. Mr. Carlson had no difficulty in explaining how he would use the last scheduled normal pickup from the CBMS database in conjunction with the LR-4 information on advanced collections to perform his calculation of alleged "harm" to customers from advanced pickups. His failure to provide any coherent explanation of how he would use other CBMS data elements, or how he would use any CBMS information from districts that did not advance collections, is not a function of his inability to anticipate what those data fields might contain. It reflects, rather, the fundamental irrelevance of these data to the material issues in this proceeding.

Mr. Carlson has had not one, but two, opportunities to explain why he needs the

entire CBMS database that he requested. His second bite at the apple, appearing at pages 11-13 of his August 2 Cross-Motion, shows just how far he has to stretch to conjure up a supposed need for everything covered by the interrogatory. To explain why he needs information for districts that have not advanced collections in the past, all Mr. Carlson was able to come up with was an argument that the scope of this case should not be limited to *previous* instances of collection advancements on holiday eves, and he therefore needs the data to model the harm that would be caused by *imaginary* advancements that, in his view, might take place in the future, even in districts which did not advance collections in the past. Cross-Motion at 11-12.[5] This argument, which simply does not pass the straight face test, is the best Mr. Carlson could come up with in his second attempt. Having started in the June 26 motion to compel with an alleged need for *quantification* of past harm, we are now expected to embrace instead

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[5] In yet another irony in this dispute, Mr. Carlson at this point in his Cross-Motion chastises the Postal Service for an excessive attention to the past, and asserts that "the focus of this proceeding is not merely on evaluating past practices." In fact, however, as explained above, Mr. Carlson's only earlier-stated justification for a need to move beyond the district-level information already available in LR-4, was to further quantify the alleged "harm" caused by advanced collections in the past. In contrast, it was the Postal Service that identified the inherent weakness in that justification in the following portion of its July 9 Opposition to the Motion to Compel (pages 2-3):

> [T]he purpose of this proceeding is not to reconstruct the comprehensive and definitive history of every last detail of postal operations at any one particular time and place in the past, or any group of times and places in the past. This is not a trial in which the Postal Service will be found guilty or not guilty of failing to provide adequate service on President's Day 1995 or Labor Day 1998 or Christmas Eve 1999, and therefore every last speck of information about what happened on those days needs to be identified and carefully evaluated. . . . [A]n excessive fixation with details specific to discrete historical incidents on unique days in the past, which is abundantly manifest in the micro-level analysis advocated in the motion to compel, is counterproductive.

speculations of future harm. Sheer speculation, whether or not couched in the guise of a "model", does not constitute admissible evidence. If Mr. Carlson simply wants to complain that the Postal Service might do evil things in the future, there is no need for any aggregated or disaggregated information, from the CBMS or from anywhere else.[6]

One particularly disconcerting aspect of Ruling No. 10 is the acknowledgment (page 4, footnote 10) of the potential for the abuse of the discovery process posed by "fishing expeditions," but the apparent failure to appreciate the presence of one in this instance. Mr. Carlson purposefully cast out his net as broadly as possible, seeking the entire nationwide CBMS database. Confronted with the fact that information from two-thirds of the districts would not be applicable to the use he has proposed, his only solution is to come up with a new proposal for an impermissible, purely speculative, use. Rather than recognize the ineluctable conclusion to which these facts lead, Ruling No. 10 simply retreats to an assertion that his articulated uses were only intended as examples, and that all of the data were already found in Ruling No. 6 to be relevant. As suggested above, a fair reading of Ruling No. 6 does not necessarily support that

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[6] With respect to the scope of relevant information for those districts which actually have curtailed collections, and the Postal Service's demonstration (July 27 Motion for Reconsideration at 6-7) that, even for those districts, it is generally unnecessary to know the location of the box within the district to calculate the number of hours by which collection was advanced, Mr. Carlson's response is limited to an assertion that he needs to know the city and location of boxes in order to conduct "case studies." August 2 Cross-Motion at 12-13. Ironically, he uses as an example of such a case study the situation in the Wall Street area of Manhattan on July 3, 2000. Without any information in response to DFC/USPS-19, however, Mr. Carlson has been perfectly able to make arguments and conduct other discovery on the Wall Street situation. See Carlson July 31 Motion to Compel on DFC/USPS-71(a-b); P.O. Ruling No. C2001/8 (August 10, 2001). Moreover, his "case studies" of specific situations within the districts already identified in LR-4 would be, by definition, localized and temporary situations that would not materially add to the analysis of national issues.

interpretation. Even if Ruling No. 6 could be construed to support that conclusion, however, it is an erroneous one, as Mr. Carlson has never articulated a permissible use for collection box level information pertaining, at a minimum, to those districts with no record of advanced holiday eve collections.

This also relates to another disconcerting aspect of the discussion in Ruling No. 10. After noting that the Postal Service's motion for reconsideration proposed to provide what were described as "five different databases each limited in geographic area, data elements, or by those containing only holiday pickup data," the Ruling stated:

> The concern of the presiding officer is that the database will be subdivided to such an extent that all perspective will be lost in using this data to analyze a national issue.

Ruling No. 10 at 4. The subdivisions proposed by the Postal Service, however, are nothing more than creation of the subsets of CBMS data that would of necessity be only the *first step* of the extensive calculation process described by Mr. Carlson. Mr. Carlson proposes to further subdivide the database all the way down to the point that he is performing his analysis on individual collection boxes. From its initial June 4 objection, the Postal Service has been the party pointing out that this level of micro-analysis is unsuitable for resolution of "a national issue." It is perplexing that the Ruling would fault the Postal Service's counterproposal as creating a potential impediment to analysis of a national issue, when the entire purpose of Mr. Carlson's request is to obtain specific information for each of hundreds of thousands of individual collection boxes. This flawed reasoning, moreover, apparently contributed to the inappropriate rejection of the Postal Service's proposal to provide only the CBMS data needed for Mr. Carlson to conduct his proffered calculations.

In summary, the Postal Service submits that to the extent that Ruling No. 6 and Ruling No. 10 would grant parties access to the entire CBMS inventory database, those rulings are erroneous. Under the totality of circumstances in this instance, access is reasonably restricted to those portions of the database for which a coherent and permissible use has at least been articulated. Ruling No. 10 (at page 6) discusses the role of cooperation and compromise in settling discovery disputes. In that spirit, at this stage of the proceeding, the Postal Service submits that a workable solution is to allow access to CMBS data for two subsets of collection boxes. The first subset would be those boxes with a posted holiday collection, and the second subset would be collection boxes in the 27 districts (identified in the July 27 Motion for Reconsideration) that advanced collections in the past. For both subsets, information could be provided for all data fields, despite the fact that exact location of individual boxes is unnecessary for purposes of the described calculation of alleged "harm." Most emphatically, however, the Postal Service's suggestion that this would constitute a workable solution is conditioned on the provision of all of this material under standard protective conditions, as established in Ruling No. 6. We turn now, therefore, to the portion of Ruling No. 10, the last page and a half, from which springs the alternative solution which would grant access to CBMS data without protective conditions.

Alternative Solution

The most disturbing portions of Ruling No. 10 are the two paragraphs at the end in which, sua sponte, the Presiding Officer devises an alternative solution that would allow parties to circumvent the obligation to be subjected to protective conditions in order to obtain access to virtually the entire CBMS inventory database. The Postal

Service finds this alternative to be unacceptable, for the reasons discussed below.

First, the alternative solution portion of the Ruling is facially at odds with both earlier portions of Ruling No. 10 itself, and portions of Ruling No. 6. Both rulings (Ruling No. 6 at 3-4; Ruling No. 10 at 5-6) extol the virtues of avoiding entanglement in the public disclosure issues, and of deferring to the federal court addressing the FOIA suit to resolve such matters. Surprisingly, however, discussions and findings regarding the very same public disclosure issues which were previously determined could beneficially be avoided suddenly appear on pages 7-8 of Ruling No. 10. The unmistakable effect is to intrude directly into the issues previously identified as more appropriately resolved by the federal court. While the Postal Service submits that the security issues very briefly addressed at pages 7-8 of Ruling No. 10 have, in fact, been incorrectly resolved there, that is not the immediate concern. The Postal Service sees no point in attempting to haggle over the details of what portions of the CBMS database could be disclosed without protective conditions when, as confirmed by earlier portions of Ruling No. 10 itself, there has been no showing why the protective conditions established by Ruling No. 6 do not provide the appropriate treatment of such issues for purposes of this proceeding.

In denying Mr. Carlson's cross-motion to have the protective conditions removed, Ruling No. 10 at page 6 states that the first priority of Ruling No. 6 was to provide access to the information to argue the instant Complaint in this proceeding, and that the earlier ruling accomplished that goal. Page 6 also confirms that the federal court is available to resolve issues of access to the information for purposes other than for use in this proceeding. Explaining the approach of Ruling No. 6 to be consistent with the

Commission's general philosophy regarding discovery, page 6 continues with the statement that "protective conditions allowed release of all of the information that the Complainant argued was necessary to proceed with his Complaint." Therefore, it is inexplicable why the next page of Ruling No. 10 would suggest that the new alternative solution "is consistent with the Commission's philosophy of facilitating discovery so that participants have the material that they need to proceed with their case." One page earlier, Ruling No. 10 itself twice explained that this objective had already been achieved by adoption of the protective conditions in Ruling No. 6.

In denying the cross-motion, pages 6-7 of Ruling No. 10 also rejected the arguments that Mr. Carlson (and Mr. Popkin) had submitted regarding alleged future effects of the protective conditions. (The Postal Service's views on the total lack of validity of those arguments appeared in the August 9 Response to the Cross-Motion at pages 2-5.) If those arguments were found to be without merit in the portion of Ruling No. 10 which explicitly denied the requested relief from those protective conditions, then those same arguments surely could not be relied upon to justify the new alternative solution. The alternative emerges, therefore, as a solution proposed in the absence of a recognized problem.

The above discussion provides ample basis for the Commission to abandon the alternative solution appended to Ruling No. 10. It may be necessary, however, to further emphasize the depth of the Postal Service's concerns respecting Mr. Carlson's purpose in seeking access to the disputed information in the absence of appropriate protective conditions. When such concerns are raised, particularly in the circumstances identified below, reasonable and commensurate precautions are warranted. It is the

view of the Postal Service that the alternative solution does not provide such precautions.

In this instance, two factors clearly justify the protective conditions approach adopted by Ruling No. 6. First, Mr. Carlson has very candidly admitted that, unless prevented from doing so by protective conditions, he would use the CBMS database obtained in response to DFC/USPS-19 for purposes unrelated to this proceeding. August 2 Cross-Motion at 7. Second, Mr. Carlson maintains that he filed his CBMS interrogatories exclusively for the purpose of developing quantitative information to be used in this proceeding ("for this purpose and this purpose only"). Cross-Motion at 9. Taking Mr. Carlson at his word, imposing protective conditions which require him to limit his use of whatever CBMS data he obtains to uses for purposes of the analysis of issues in this proceeding does not interfere with the purpose he has indicated motivated his request. And, as noted in the Postal Service's August 9 Response to the Cross-Motion, short of simply refusing to provide data, the approach adopted by Ruling No. 6 provides the Postal Service with the best available protection against what it would consider to be potentially abusive use of the data for purposes unrelated to this proceeding. Because this analysis requires nothing more than accepting Mr. Carlson's statements at face value, it obviates the need to engage in any deeper consideration of questions of motivation.

In contrast, provision of CBMS information without protective conditions, pursuant to the alternative solution, would allow Mr. Carlson to engage in exactly the types of data-mining, unrelated to this case, that he admits in his Cross-Motion he would intend to pursue. For the Postal Service to view that result as anything other

than an abuse of process, it would have to be convinced that potential access to the CBMS database was not a significant motivation behind the initiation of this case, and that quantification of alleged "harm" was something more than a convenient rationalization to obtain access to previously-sought information. Obviously, those are difficult matters to attempt to address with any confidence of achieving a well-founded resolution. Nevertheless, until its concerns in these matters are alleviated, or unless the federal court makes those concerns moot, the Postal Service is not prepared even to address the security aspects of the alternative solution. The overwhelming convergence of factors which point to protective conditions as the appropriate resolution of this potential impasse is manifest. The Postal Service urges the Commission to reaffirm the protective conditions established by Ruling No. 6, reaffirm the rejection in Ruling No. 10 of the attempt to have those protective conditions removed, and to abandon the portion of Ruling No. 10 which attempts to create an alternative solution.

CONCLUSION

As discussed in full above, the Postal Service seeks certification of an appeal to the Commission of two aspects of Ruling No. 10. First, the portion of the CBMS database to which Mr. Carlson should be granted access is reasonably limited to those portions for which he has arguably articulated a coherent application for purposes of this proceeding. To simplify such a determination under the current circumstances, the Postal Service is willing to include all data elements for collection boxes with a posted holiday collection, and all elements on all boxes in the 27 districts that have advanced collections on holiday eves in the past. Second, parties should be granted access to

these CBMS data only under the provisions of the protective conditions adopted by Ruling No. 6. The alternative solution set forth in Ruling No. 10, regarding a subset of data elements of the entire CBMS database, should be withdrawn.

Therefore, the Postal Service respectfully requests that the above-described appeal of P.O. Ruling No. C2001-1/10 be certified to the Commission, and that the Commission modify the provisions of that ruling consistent with the discussion in the text of this pleading.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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August 28, 2001

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon:

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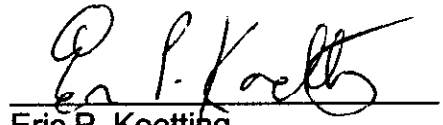

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